

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
August 31, 2000 Session

**LINDA HARRIS v. HERITAGE MANOR OF MEMPHIS**

**Direct Appeal from the Chancery Court for Shelby County  
No. 107931-1 Walter L. Evans, Chancellor**

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**No. W2000-00081-WC-R3-CV - Mailed April 23, 2001; Filed June 5, 2001**

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This worker's compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court determined that the plaintiff had suffered a 20% vocational impairment to the left arm and a 10% vocational impairment to the right arm as the result of bilateral carpal tunnel syndrome. The defendant asserts that the plaintiff failed to prove her injury arose out of and within the course and scope of her employment; that she failed to give proper notice of her injury to the defendant; and that the evidence does not support the amount of vocational disability awarded. For the reasons set forth below, we affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right;  
Judgment of the Chancery Court is Affirmed.**

J. STEVEN STAFFORD, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and WIL V. DORAN, SP. J., joined.

Lori Keen, Memphis, Tennessee, for the appellant, Heritage Manor of Memphis.

Sherry M. Percival, Jackson, Tennessee, for the appellee, Linda Harris.

**OPINION**

The plaintiff, Linda Harris, is a 48 year old woman. She is a high school graduate, received a nursing degree from East Arkansas Community College in 1990, and was licensed as a nurse in 1992. Prior to her employment with the defendant, Heritage Manor of Memphis, she worked for Baptist Hospital for approximately 6 years.

The plaintiff began working for the defendant in July 1995. She was hired as an RN supervisor and was told she would be working on both the intermediate floor and the skilled unit

floor. The patients on the skilled unit floor require the most care. Some of the patients on the skilled unit floor were required to be fed by way of a feeding tube. At times, the feeding tubes would become clogged and the plaintiff would have to use a process commonly known as "milking" to unclog the tubes. This process required the plaintiff to primarily utilize the first three digits of both hands. She would continually run her fingers down the feeding tube until it was cleared. The process could take as long as 20 to 30 minutes per tube. Over the course of the plaintiff's shift, she would average unclogging at least 3 feeding tubes.

In November 1995, the plaintiff began having problems with her hands and wrists. She testified that her fingers and hands became sore and felt big and heavy. She also experienced pain in both of her wrists.

The plaintiff informed Carla Baker, the defendant's director of nursing, about her problems. She was not advised to fill out an incident report nor was she offered a panel of doctors. The plaintiff did not tell Ms. Baker that her injury was work related because she did not know what was causing her problem. The problem with her hands kept her from performing some of her job duties. Prior to her employment with the defendant, the plaintiff never had any problems with her hands.

The plaintiff sought medical care from her family doctor, Melanie Woodall. The plaintiff advised Dr. Woodall that she was an RN and that part of her job required her to milk feeding tubes. Dr. Woodall informed the plaintiff that her problem sounded like carpal tunnel and prescribed medication and hand splints and ordered a nerve conduction test. The plaintiff began wearing the hand splints while she was working, driving and sleeping.

The plaintiff advised the defendant's director of nursing, Ms. Baker, and the assistant director of nursing, Shirley Crump, of Dr. Woodall's preliminary diagnosis and that Dr. Woodall had scheduled a nerve conduction test for her in January 1996.

The nerve conduction test was performed as scheduled and revealed that the plaintiff had bilateral carpal tunnel syndrome. The plaintiff advised Ms. Crump of the test results.

Dr. Woodall subsequently referred the plaintiff to Dr. Boarland and then to Dr. Ragsdale. The plaintiff testified that she told Dr. Ragsdale she was an RN and that her job required her to milk feeding tubes. This information is not in Dr. Ragsdale's records. Dr. Ragsdale initially attempted to treat the plaintiff conservatively. When her condition did not improve, he performed surgery on her left arm on September 9, 1996.

The plaintiff resigned her job with the defendant on May 22, 1996, because she could no longer perform her duties as the result of the problems she was having with her hands. In July 1997, she began work for Interim Health Care performing private duty nursing. She also works for flu clinics on a seasonal basis giving flu shots.

The plaintiff testified that the surgery helped her condition. However, she continues to have problems with her hands. Her fingers will feel sore and heavy and her hands and wrists continue to hurt at times. Her ability to grip has improved and she is now able to work with her hands.

### **MEDICAL EVIDENCE**

The medical records of Dr. Melanie Woodall were introduced at trial as well as the depositions of Dr. Blake Ragsdale and Dr. Joseph Boals. Dr. Woodall's medical records substantiate the plaintiff's testimony regarding her diagnosis of carpal tunnel syndrome.

Dr. Blake Ragsdale, a board certified orthopaedic surgeon, first saw the plaintiff on July 8, 1996, on a referral from Dr. Woodall. He testified that after examining the plaintiff, his working impression was that the plaintiff suffered from bilateral carpal tunnel syndrome. He initially treated the plaintiff conservatively but subsequently performed carpal tunnel surgery on her left arm on September 9, 1996. After the surgery, he sent the plaintiff to the Hand Clinic for physical therapy. He last saw the plaintiff on November 25, 1996. At that time, she had a full range of motion, was experiencing no pain, had good grip strength, was totally functional, and had a normal sensory examination.

Dr. Ragsdale allowed the plaintiff to return to work on December 2, 1996, with no restrictions. He testified that the plaintiff's symptomatology on her right hand seemed to resolve itself after the surgery on her left hand. He opined that the plaintiff had suffered no anatomical impairment to either hand.

Dr. Ragsdale testified that he was not aware that the plaintiff was claiming that she was injured at work when he was treating her. He did not recall her providing him with a history of any repetitive work activity as being the cause of her injury.

Dr. Joseph Boals performed an independent medical examination on the plaintiff at the request of her attorney on February 4, 1997. He diagnosed the plaintiff as suffering from residuals from a left carpal tunnel release and a mild carpal tunnel syndrome on the plaintiff's right hand. He testified that the plaintiff got a good result from her surgery but restricted the plaintiff in the amount of gripping and repetitive work she performed to prevent a recurrence or an increase in symptoms.

Dr. Boals opined that the plaintiff sustained a 20% anatomical impairment to the left arm and a 10% anatomical impairment to the right arm as the result of her injury.

### **NOTICE OF INJURY**

T.C.A. § 50-6-201 requires an employee to immediately notify an employer in writing of the occurrence of an injury. The notice must be given within 30 days after the injury occurs unless the

employee has a reasonable excuse for failure to give the notice or unless the employee has actual notice of the injury.

Under the terms of T.C.A., § 50-6-201, the 30-day notice period is tolled by "reasonable excuse for failure to give such notice." An employee's reasonable lack of knowledge of the nature and seriousness of his injury has been held to excuse his failure to give notice within the 30-day period. Likewise, an employee's lack of knowledge that his injury is work-related, if reasonable under the circumstances, must also excuse his failure to give notice within 30 days that he is claiming a work-related injury. It is enough that the employee notifies the employer of the facts concerning his injury of which he is aware or reasonably should be aware.

*Pentecost v. Anchor Wire Corp.*, 695 S.W.2d 183, 185 (Tenn. 1985) (citations omitted). See also *Livingston v. Shelby Williams Indus., Inc.*, 811 S.W.2d 511, 514 (Tenn. 1991) and *Powers v. Beasley*, 197 Tenn. 549, 551-52, 276 S.W.2d 720, 721 (1955).

It is undisputed that the plaintiff did not give written notice of her injury to the defendant. The plaintiff testified that she informed both the director of nursing, Carla Baker, and the assistant director of nursing, Shirley Crump, that her hands were hurting her in November 1995. She very candidly admitted that she did not tell them that her problems were work related because she did not know they were work related. As soon as Dr. Woodall told her that she thought the problem was carpal tunnel syndrome, she informed both Ms. Baker and Ms. Crump of the diagnosis. After her nerve conduction study, she informed Ms. Crump of the results. Additionally, the plaintiff testified she did not fill out an incident report because she did not know that she was required to do so.

The plaintiff's testimony is corroborated by the testimony of Shirley Crump. In fact, Ms. Crump specifically recalled the plaintiff informing her in January 1996 that she was having problems with her hands because she was required to milk the feeding tubes.

Apparently, the defendant contends that this notice should be deemed inadequate because the plaintiff did not use the words "work related" in her conversations with Ms. Baker or Ms. Crump. We do not read the statute to require the use of these words.

From an objective view, there was little more the plaintiff could do to provide the defendant with notice of her injury. On more than one occasion, she told her supervisors her hands were hurting her because she was required to milk the feeding tubes. She wore hand splints prescribed for her by both Dr. Woodall and Dr. Ragsdale while she performed her nursing duties. She notified her supervisors of her problem as well as the diagnosis of Dr. Woodall and the result of the nerve conduction test. In our view, this amply satisfies the notice requirement of T.C.A. § 50-6-201.

**INJURY ARISING OUT OF AND WITHIN THE  
COURSE AND SCOPE OF EMPLOYMENT**

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The plaintiff testified that she had never had any problems with her hands prior to beginning work for the defendant. She also testified that when she first saw Dr. Woodall she told Dr. Woodall that her job required her to milk patients' feeding tubes. The plaintiff's testimony is corroborated by the medical records of Dr. Woodall. The plaintiff also testified that she worked at no other jobs during this time nor did she have any hobbies that could have caused her injury. Dr. Boals opined that the cause of the plaintiff's injuries was her job with the defendant doing repetitive work.

The defendant submits that the plaintiff's injuries should not be attributed to her work activities because she did not provide Dr. Ragsdale with a history of repetitive work activity. The plaintiff disputes this and asserts she provided Dr. Ragsdale with the same information she gave to Dr. Woodall.

The phrase, "in the course of," refers to time and place, and "arising out of," to cause or origin; and an injury by accident to an employee is "in the course of" employment if it occurred while he was performing a duty he was employed to do; and it is an injury "arising out of" employment if caused by a hazard incident to such employment."

*Legions v. Liberty Mut. Ins. Co.*, 703 S.W. 2d 620, 622 (Tenn. 1986).

The record contains ample evidence to establish that the plaintiff's injury arose out of and within the course and scope of her employment with the defendant.

[A]bsolute medical certainty is not required to establish causation. Although causation cannot be based upon speculative or conjectural proof, reasonable doubt is to be construed in favor of the employee. The causal connection may be established by expert opinion combined with lay testimony.

*White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992) (citations omitted).

The plaintiff's testimony together with Dr. Woodall's medical records and Dr. Boals' deposition testimony fully supports the trial court's judgment on these issues.

**VOCATIONAL DISABILITY**

The trial court found that the plaintiff had suffered a 20% vocational impairment to her left arm and a 10% vocational impairment to her right arm. The defendant asserts that these awards are excessive and are not supported by the evidence.

When medical testimony differs, it is within the discretion of the trial judge to determine which expert testimony to accept. *Kellerman v. Food Lion, Inc.*, 929 S.W.2d 333, 335 (Tenn. Sp. Workers Comp.1996); *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

[W]here the issues involve expert medical testimony and all the medical proof is contained in the record by deposition, as it is in this case, then this Court may draw its own conclusions about the weight and credibility of that testimony, since we are in the same position as the trial judge. With these principles in mind, we review the record to determine whether the evidence preponderates against the findings of the trial court.

*Krick v. City of Lawrenceburg*, 945 S.W.2d 709, 712 (Tenn. 1997) (citations omitted); see also *Elmore v. Travelers Ins. Co.*, 824 S.W.2d 541, 544 (Tenn. 1992) (when testimony is presented by deposition, this Court is in just as good a position as the trial court to judge the credibility of those witnesses.)

The extent of an injured worker's disability is an issue of fact. *Jaske v. Murray Ohio Mfg. Co.*, 750 S.W.2d 150, 151 (Tenn. 1988). In *Walker v. Saturn Corp.*, 986 S.W.2d 204 (Tenn. 1998), the Supreme Court discussed the factors to utilize in determining vocational disability and stated in pertinent part:

The Panel correctly held that a vocational impairment is measured not by whether the employee can return to her former job, but whether she has suffered a decrease in her ability to earn a living. This Court stated in *Corcoran* that a vocational disability results when "the employee's ability to earn wages in any form of employment that would have been available to him in an uninjured condition is diminished by an injury."

In assessing the extent of an employee's vocational disability, the trial court may consider the employee's skills and training, education, age, local job opportunities, anatomical impairment rating, and her capacity to work at the kinds of employment available in her disabled condition. Further, the claimant's own assessment of her physical condition and resulting disabilities cannot be disregarded. The trial court is not bound to accept physicians' opinions regarding the extent of the plaintiff's disability, but should consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability.

*Walker*, 986 S.W.2d at 208 (citations omitted).

The plaintiff had surgery on her left arm. As a result of this surgery, the problems with her right arm were resolved so that surgery was not necessary.

Dr. Ragsdale testified that the plaintiff got a good result from her surgery and that he did not feel that she had any anatomical impairment from her injuries. Dr. Boals also testified that the plaintiff got a good result from her surgery but opined that she had suffered a 20% anatomical impairment to her left arm and a 10% anatomical impairment to her right arm.

The plaintiff testified that she continues to have problems with her hands. She stated that her fingers feel sore and heavy and that her hands and wrists hurt. She candidly admits that her hands are better since the surgery and that she is able to do the job she now has.

Dr. Boals also opined that the plaintiff should reduce the amount of gripping and repetitive work she performs in order to avoid a recurrence of carpal tunnel syndrome or an increase in symptoms.

We find that the trial court properly applied the relevant factors in determining the extent of the plaintiff's vocational disability. We are to presume the correctness of the trial court's findings unless the preponderance of the evidence is otherwise. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315 (Tenn. 1987). We find that the evidence does not preponderate against the trial court's judgment.

We note that the trial court made separate awards to each arm. Tennessee Code Annotated § 50-6-207(3)(A)(ii)(w) provides scheduled benefits for the loss of two (2) arms. We therefore modify the award to fifteen percent (15%) permanent partial disability to both arms which will neither increase nor decrease the award but will conform the trial court's judgment to the statute.<sup>1</sup> See *Drennon v. Gen. Elec. Co.*, 897 S.W.2d 243, 247 (Tenn. Sp. Workers Comp. 1994) (Averaging the disabilities to each arm to arrive at a single disability for both arms "is a proper method of calculating plaintiff's disability.").

## CONCLUSION

After hearing the proof in this case, the trial court made detailed findings of fact and conclusions of law from the bench. The defendant has challenged a portion of these findings. We have reviewed the findings of fact and conclusions of law as mandated by the appropriate statute and case law and find that they should be affirmed. See Tenn. Code Ann. § 50-6-225(c)(2) and *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

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<sup>1</sup>The trial court awarded ten percent (10%) permanent partial disability to the right arm or twenty (20) weeks of benefits and twenty percent (20%) permanent partial disability to the left arm or forty (40) weeks of benefits, based on a two hundred (200) week maximum loss of an arm for a total award of sixty (60) weeks of benefits. Loss of two arms, Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w), is a scheduled injury with a maximum of four hundred (400) weeks of benefits. Fifteen percent (15%) permanent partial disability to both arms is also sixty (60) weeks of benefits.

The judgment of the trial court is affirmed as modified and the costs are taxed to the defendant, Heritage Manor of Memphis.

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J. STEVEN STAFFORD, SPECIAL JUDGE

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**No. W2000-00081-WC-R3-CV - Filed June 5, 2001**

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**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, Heritage Manor of Memphis, for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**